IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9379 of 2000

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI
and
Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

NUMECH EMBALLAGE LTD

Versus

SALES TAX OFFICER (2)

Appearance:

MR NV ANJARIA for Petitioners

Mr.Kodekar, Asst. Govt. PLEADER for Respondent No. 1, 2, 3

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI
and
MR.JUSTICE M.S.SHAH

Date of decision: 27/12/2000

CAV JUDGEMENT

(Per : CHIEF JUSTICE MR DM DHARMADHIKARI)

The petitioner is engaged in the manufacture and sale of HPDE Woven Sacks, HPDE Woven Sacks laminated with paper and HPDE Woven sacks with loose paper liner inside. It is selling its manufactured products in the State of Gujarat as well as outside Gujarat in the course of inter-state trade and commerce. It has its registered Administrative office at Mumbai in the State of Maharashtra. Its factory is at Bhilad, District Valsad. In the course of its trade, it is also required to transfer its manufactured products from Bhilad, where it has its factory to its main office at Mumbai.

2. By this petition under Article 226 of the Constitution of India, the petitioner company seeks quashing the impugned orders dated 26.4.2000 (Annexure E) and 17/19.5.2000 (Annexure I) passed by the Sales Tax Officer, Valsad respondent no.1 in purported exercise of powers under Section 40-A and 41-B of the Gujarat Sales Tax Act (hereinafter referred to as the "Local Act") read with Section 9(2) of the Central Sales Tax Act. The Sales Tax Officer, Valsad respondent no.1 has invoked his jurisdiction under Section 41(B) and under Section 48-A for making provisional assessment and for that purpose has made a provisional attachment of the properties of the petitioner. Section 41-B, which empowers the Commissioner or his delegates to make provisional assessment, in its relevant parts, reads as under:-

"41.B. PROVISIONAL ASSESSMENT

(1) Where the Commissioner has reason to believe that the dealer has evaded the tax, he may, after taking into account all relevant materials gathered by him and after giving the dealer a reasonable opportunity of being heard, provisionally assess to the best of his judgement the amount of tax payable by the dealer.

(2) The provisions of this Act shall mutates mutandis apply to the provisional assessment as if provisional assessment were an assessment made under this Act."

3. Section 48-A introduced by amendment w.e.f 1.8.1998 empowers the Commissioner or his delegate to effect attachment provisionally of the property of the dealer where it is necessary in his opinion for the purpose of protecting the interest of the Revenue. Section 48-A(1) & (2) of the Act reads as under:-

"48.A PROVISIONAL ATTACHMENT TO PROTECT REVENUE:

(1) Where during the pendency of any proceeding of provisional assessment or assessment of tax or reassessment of turnover escaping assessment the commissioner is of the opinion that for the purpose of protecting the interest of the revenue, it is necessary so to do, he may by order in writing attach provisionally any property belonging to the dealer in such manner as may be prescribed.

(2) Every such provisional attachment shall cease to have effect after the expiry of a period of six months from the date of the order made under sub-section (1):

Provided that the commissioner may, for reasons to be recorded in writing, extend the aforesaid period by such period or periods as he thinks fit so however that the total period shall not in any case exceed one year;"

4. Learned Counsel Shri N.V.Anjaria appearing for the petitioner company assails the impugned action of the Sales Tax Officer, Valsad of initiating the proceedings of provisional assessment under Section 41(B) and the attachment of the properties under Section 48-A of the Act. It is contended contending that only because the petitioner company is sending its manufactured goods from its factory to its main office at Mumbai, there is no reasonable ground to believe that the petitioner as dealer has evaded the tax. The branch transfers according to the petitioner company, are not exigible to tax but according to the Sales Tax Department they are inter-state sales. It is argued that provisional assessment for the block period could not be resorted to merely because the branch transfers are being viewed by the Department as interstate sales.

5. Learned Counsel contends that for initiating action under Section 41-B, formation of reasonable belief by the Sales Tax Authority of evasion of tax by the dealer, is necessary which is not present in this case. The whole action of initiating proceedings for provisional assessment and for that purpose making an order of protective attachment are liable to be quashed.

Very strong reliance has been placed on a Division Bench decision of this Court to which one of us i.e. D.M.Dharmadhikari, Chief Justice was a party in Botlibuoy & Co. Ltd. & Anr. Vs. Sales Tax Officer, Surat in SCA No. 2593 of 1999 decided on 10.4.2000.

6. Learned Counsel also relied on the decisions in the case of Natraj Rubbers and Another V. Sales Tax Officer, Division - 3, Bhavnagar reported in [1999] 113 STC O575W, in Dwijendra Kumar Bhattacharjee Vs. Superintendent of Taxes, Government of Tripura, Agartala and others reported in [1990] 78 STC 393 and in Commissioner of Sales Tax, Maharashtra State, Bombay V. Kalpana Waterproof Products Mfg. Co. reported in [1986] 062 STC 0181.

7. Learned Asst. Government Pleader Shri Kodekar appearing for the Sales Tax Department supports the action of the Sales Tax Authority. Attention of the Court is invited to the contents of the reply affidavit filed on behalf of the concerned Sales Tax Officer, Valsad. On behalf of the Department, it is stated that search was conducted of the office of the petitioner company at Bhilad and search was also conducted at its Head Office at Mumbai by Maharastra Sales Tax Authority. In the course of search conducted at Bhilad, it was found that certain transactions described as branch transfers were not such but they were pre-determined sales. In the garb of branch transfers consignments of manufactured goods were directly diverted to a customer of Ratnagiri district of Maharashtra. Such branch transfers were effected without "C" forms. Investigations made in such transactions reveal that certain pre-determined sales were effected in the garb of branch transfers without "C" forms and tax on transaction in the tune of Rs.2,95,00,309/- was evaded for the period between 1992-93 to 1996-97. Proceedings for block assessment on provisional basis were therefore initiated for the period 1992-93 to 1994-95 giving rise to an aggregate demand of Rs.2,44,04,606/- which has not yet been satisfied. The petitioner has paid tax only in the sum of Rs.1,28,22,278/-. In the reply affidavit, on the above facts, it is stated that there were sufficient reasons for the Authority to believe that the petitioner has evaded tax necessitating initiation of proceedings for provisional assessment for the block period and for attachment of the property of the petitioner for protecting revenue.

8. After hearing the Learned Counsel appearing for the dealer and the Department and on going through the

records and the contents of the reply affidavit, we have come to the conclusion that in the instant case, it cannot be justifiably be complained that the Sales Tax Officer casually or without application of mind has initiated proceedings for provisional assessment for block period under Section 41-B and illegally effected attachment of the property of the petitioner under Section 48-A of the Act. The decisions of the Division Bench of this Court in the case of Botlibuoy and Co. Ltd. (Supra), on which heavy reliance is placed, is distinguishable on facts. In that case, the Sales Tax Authority which had taken the action had failed to produce material to justify its action of provisional assessment and attachment of properties of the dealer. The Division Bench took note of the fact that in the reply affidavit, in that case the Sales Tax Officer had merely stated thus:

"As a very large amount of tax was involved and regular assessment of the petitioner was likely to take time he had decided to make provisional assessment."

This was hardly a sufficient ground as to infer formation of reasonable opinion for making a provisional assessment and attachment of the property of the dealer. In Botlibuoy case (Supra), there were transactions disclosing prima facie inter state works contracts which could not be brought to tax under Central Sales Tax Act.

9. The decision of Botlibuoy & Co. (Supra) of this Court is therefore distinguishable on facts and is of no assistance to the petitioner. The other decisions cited on behalf of the petitioner support his submission that the pre-requisite for taking action under section 48-A and 41-B is formation of a reasonable opinion on objective basis that the dealer has evaded tax and attachment of his property is necessary for protecting the interest of the Revenue. In the instant case, search was conducted simultaneously at the place of manufacture of the petitioner in Bhilad by Gujarat Sales Tax Authorities and at their main office at Mumbai by Maharashtra Sales Tax Authority. Certain incriminating transactions were detected showing that in the garb of branch transfers, goods were directly diverted to buying parties in the State of Maharastra. Thus a large scale evasion of central sales tax was prima facie found to have taken place in the garb of branch transfers. Whether those branch transfers are infact such or they are exigible to intra-state or inter-state sales is a matter which can be decided only in the course of assessment. As per the statement made on affidavit

provisional assessment has been completed and demand has been raised. In such circumstances, the petitioner can approach the higher authorities for challenging the action of the Sales Tax Officer on permissible grounds. This is not a case where it can be held that the Sales Tax Authority has no material or information with it to form a reasonable belief of evasion of tax. The action of provisional assessment and attachment of the property of the petitioner cannot be held to be an action without justification in law.

10. We, therefore, do not find any legal infirmity in the impugned action of provisional assessment and attachment of the property of the petitioner.

11. At the time of considering prayer for interim relief, we did not find any justification to keep under attachment the movable property of the petitioner like finished and semi-finished goods including raw material as that would have caused incalculable losses to the manufacturing and trading activities of the petitioner. We therefore granted an interim relief by order dated 17.10.2000 and directed the Sales Tax Authorities to lift the attachment of movable properties i.e. finished and semi-finished goods including raw material on the condition of the petitioner furnishing security on its immovable properties to the satisfaction of the Recovering Officer. We, consider it proper to make the interim order passed on 17.10.2000 as final while disposing of this petition.

12. Consequently, the petition fails and is hereby dismissed and in the circumstances, we make no orders as to costs. Rule discharged.

(D.M.Dharmadhikari, CJ)

(M.S.Shah, J)

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